

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

STEVEN HOTZE, M.D., WENDELL CHAMPION,	)	
HON. STEVE TOTH, AND SHARON HEMPHILL,	)	
	)	Civil Action No. 4:20-cv-3709
Plaintiffs,	)	
	)	
v.	)	
	)	
CHRIS HOLLINS, in his official capacity as Harris	)	
County Clerk,	)	
	)	
Defendant.	)	
<hr/>	)	

**DEFENDANT’S RESPONSE TO SHOW CAUSE ORDER**

THE ALEXANDER FIRM, PLLC  
Joseph R. Alexander, JR.  
*Of Counsel*  
Texas Bar No. 00995150  
Federal ID No. 1368  
Two Greenway Plaza, Suite 650  
Houston, Texas 77046  
Telephone: (713) 344-2094  
Facsimile: (713) 513-5543  
[joe@alexanderfirmpllc.com](mailto:joe@alexanderfirmpllc.com)

MITHOFF LAW  
Richard Warren Mithoff  
*Attorney of Record*  
Texas Bar No. 14228500  
Federal ID No. 2102  
[rmithoff@mithofflaw.com](mailto:rmithoff@mithofflaw.com)  
Janie L Jordan  
Texas Bar No. 11012700  
Federal ID No. 17407  
[jjordan@mithofflaw.com](mailto:jjordan@mithofflaw.com)  
Sherie Potts Beckman  
Texas Bar No. 16182400  
Federal ID No. 11098  
[sbeckman@mithofflaw.com](mailto:sbeckman@mithofflaw.com)  
500 Dallas Street, Suite 3450  
Houston, Texas 77002  
Telephone: (713) 654-1122  
Facsimile: (713) 739-8085

**ATTORNEYS FOR DEFENDANT**

TO THE HON. ANDREW HANEN, UNITED STATES DISTRICT JUDGE:

Defendant respectfully files this response to the Court's Show Cause Order dated December 3, 2021.<sup>1</sup>

The Fifth Circuit issued its judgment on November 30, 2021. It stated that the judgment of this Court was "AFFIRMED IN PART and REVERSED IN PART, and the cause is REMANDED to the District Court for further proceedings in accordance with the opinion of this Court." Doc. 68. On December 3, this Court ordered the parties to file responses "as to why this case should not be dismissed." Doc. 70. In fact, it *should* be dismissed (and in truth, it already has been).

This Court dismissed this case for lack of standing. Doc. 63 at 1, 9. The Court correctly observed that "Article III of the Constitution limits federal jurisdiction to 'Cases' and 'Controversies.' One component of the case or controversy requirement is standing." *Id.* at 2 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Thus, in the absence of a justiciable controversy, this matter was dismissed for lack of subject-matter jurisdiction. *Id.*

The Fifth Circuit affirmed that dismissal order, in part on standing grounds and in part on mootness grounds. *See Hotze v. Hudspeth*, 16 F.4th 1121, 1123-25 (5th Cir. 2021). Both grounds implicate subject-matter jurisdiction.

---

<sup>1</sup> During the appeal to the Fifth Circuit, a newly-elected Harris County Clerk, Teneshia Hudspeth, was substituted for Chris Hollins as the defendant-appellee.

Mootness, like standing, involves the case-or-controversy test of Article III. “[A] case or controversy must exist at all stages of the litigation, not just at the time the suit was filed.” *Lopez v. City of Houston*, 617 F.3d 336, 340 (5th Cir. 2010). Thus, this Court’s judgment of dismissal for want of jurisdiction was affirmed on two distinct but related grounds.

The Fifth Circuit left no doubt that the jurisdictional dismissal was affirmed; its opinion is explicit: “we AFFIRM the district court’s denial of injunctive relief *and the district court’s dismissal of Plaintiffs’ claims for want of jurisdiction.*” *Hotze*, 16 F.4<sup>th</sup> at 1125 (emphasis added). Accordingly, this Court lacks jurisdiction to conduct any further proceedings in this matter.

True, the Fifth Circuit’s judgment also stated that this Court’s judgment was “REVERSED IN PART” and “REMANDED to the District Court for further proceedings in accordance with the opinion of this Court,” Doc. 68, but that decree was just an imprecise reference to the opinion’s explanation that the court of appeals “vacated” the advisory portions of this Court’s opinion: “Since the district court likewise lacked jurisdiction, we also VACATE its advisory discussion of the legality of drive-thru voting without offering any opinion as to the merits of that reasoning.” *Hotze*, 16 F.4<sup>th</sup> at 1125. This Court may wish to vacate those portions of its order that constituted an advisory opinion (though the Fifth Circuit has done so already). But without jurisdiction, there is nothing else for the Court to do.

## CONCLUSION

This Court's judgment of dismissal for want of jurisdiction was affirmed, leaving nothing for this Court to adjudicate. Thus, the case should be dismissed.

Respectfully submitted,

/s/ Richard Warren Mithoff

Richard Warren Mithoff

*Attorney of Record*

Texas Bar No. 14228500

Federal ID No. 2102

[rmithoff@mithofflaw.com](mailto:rmithoff@mithofflaw.com)

Janie L. Jordan

Texas Bar No. 11012700

Federal ID No. 17407

[jjordan@mithofflaw.com](mailto:jjordan@mithofflaw.com)

Sherie Potts Beckman

Texas Bar No. 16182400

Federal ID No. 11098

[sbeckman@mithofflaw.com](mailto:sbeckman@mithofflaw.com)

MITHOFF LAW

500 Dallas Street, Suite 3450

Houston, Texas 77002

Telephone: (713) 654-1122

Facsimile: (713) 739-8085

OF COUNSEL:

Joseph R. Alexander, JR.

THE ALEXANDER FIRM, PLLC

Texas Bar No. 00995150

Federal ID No. 1368

Two Greenway Plaza, Suite 650

Houston, Texas 77046

Telephone: (713) 344-2094

Facsimile: (713) 513-5543

[joe@alexanderfirmpllc.com](mailto:joe@alexanderfirmpllc.com)

**ATTORNEYS FOR DEFENDANT**

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record via the Court's electronic filing system pursuant to the Federal Rules of Civil Procedure on December 16, 2021.

/s/ Richard Warren Mithoff, Jr.  
Richard Warren Mithoff, Jr.